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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,235	10/06/2005	Pierpaolo Zambotto	163-664	6366
47888 7590 08/06/2009 HEDMAN & COSTIGAN P.C. 1185 AVENUE OF THE AMERICAS NEW YORK, NY 10036				
EXAMINER				
PURDY, KYLE A				
ART UNIT		PAPER NUMBER		
1611				
MAIL DATE		DELIVERY MODE		
08/06/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/552,235

Applicant(s)

ZAMBOTTO ET AL.

Examiner

Kyle Purdy

Art Unit

1611

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05/11/2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 32 is/are allowed.
- 6) ☒ Claim(s) 17-26 and 28-31 is/are rejected.
- 7) ☒ Claim(s) 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Status of Application

1. The Examiner acknowledges receipt of the amendments filed on 05/11/2009 wherein claims 1-16 have been cancelled and claims 17-32 are newly added.
2. Claims 17-32 are presented for examination on the merits. The following rejections are made.

Response to Applicants' Arguments

3. Applicants arguments filed 05/11/2009 regarding the objection to the specification made by the Examiner have been fully considered and they are found persuasive. This objection has been overcome by Applicants arguments
4. Applicants arguments filed 05/11/2009 regarding the objection of claim 15 made by the Examiner have been fully considered and they are found persuasive. This objection has been overcome by cancellation of the claims
5. Applicants arguments filed 05/11/2009 regarding the rejection of claim 16 made by the Examiner under 35 USC 112, second paragraph have been fully considered and they are found persuasive. This objection has been overcome by cancellation of the claims.
6. Applicants arguments filed 05/11/2009 regarding the rejection of claims 1-13 and 16 made by the Examiner under 35 USC 103(a) over Baker (US 5720951) in view of Maruyama et al. (JP H02-149501) and Endepols et al. (US 2005/0181003) have been fully considered and they are found persuasive. This objection has been overcome by cancellation of the claims.
7. Applicants arguments filed 05/11/2009 regarding the rejection of claim 14 made by the Examiner under 35 USC 103(a) over Baker in view of Maruyama in view of Endepols, in further

view of Aeschlimann (US 1858177) have been fully considered and they are found persuasive. This objection has been overcome by cancellation of the claims.

Allowable Subject Matter

8. Claim 32 is allowed. Claim 32 is distinguished from the prior art for several reasons. First, the claim narrowly defines what the composition is by limiting the composition to 'consisting' of. Second, the composition itself includes a wide array of components at weight percentages which are not obvious over the prior art. For instance, nothing in the art would obviate a composition consisting of palm oil at 25%, 0.075% of triethanolamine, 11.25% of refined sugar, 12.5% of ground biscuit, 49.1565% of superfine flour, 2.0% of preservatives, 0.0125% of saccharine, 0.005% of brodifacoum and 0.001% of denatonium benzoate. The weight percentages distinguish the presently claimed composition from the prior art. While the previously cited prior art teach each of the elements, they, nor any other applicable art, motivate including each of aforementioned components in the instantly required amounts.

New Objections and Rejections, Necessitated by Amendment
Objection to Claims, Allowable Subject Matter

9. Claim 27 is objected to as being dependent upon a rejected base claim, but would likely be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

11. Claim 30 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

12. Applicant has added claim 30 which recites a ‘A method as defined in claim 28 wherein 10 to 30g per square meter of the composition is provided’. However, Applicant does not have support for the limitation to 30 grams of rodenticidal composition per square meter. Applicant only has support for 10 to 20g of rodenticidal composition per square meter. See [0076] which is Applicants only mention of the amount of rodenticidal composition provided. If Applicant contends that there is support for such a specific limitations, then Applicant is requested to point to the specific page and line of said support. This is a new matter rejection.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

15. Claims 17-25, 28, 29 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker (US 5720951, published 02/24/1998; of record) in view of Maruyama et al. (JP H02-149501, published 11/30/1988, abstract relied upon; of record) and Endepols et al. (US 2005/0181003, filed 04/24/2003; of record).

16. Baker is directed to rodenticide bait. The bait comprises a mixture of ground cereal like ground wheat (a crop powder), icing sugar (refined sugar), an oil (vegetable oil such as peanut oil), triethanolamine, a preservative, a bittering agent such as denatonium benzoate and a rodenticide such as brodifacoum (see Examples 1-4; see instant claims 17-25 and 31). It's also taught that the composition may comprise saccharin as a palatability enhancing agent (see column 4, line 5). Other exemplified rodenticidal compounds include that of warfarin (see column 4, line 25; see instant claims 23 and 24).

17. Baker fails to teach the composition as being in the form of a paste. Baker also fails to teach the vegetable oil as being palm oil and the ground flour as being superfine.

18. Maruyama is directed to a bait for rodents comprising a rodenticide such as warfarin (see instant claims 11 and 12). The bait is a mixture of oils and crop powder. Exemplified oils include coconut and palm oils (see instant claims 1-7).

19. Endepols is directed to making products for killing harmful rodents (see abstract). The rodenticide products are to be in the form of a paste. Paste according to Endepols is a combination of ground cereals and vegetable oils (see [0002]). It is taught that pastes are preferred because of their superior palatability to the rodent and minimize the chances of non-target animals eating the bait (see [0006]. Moreover, bait pastes are useful for killing rodents because a paste may be shaped, have improved consistency over dry bait, and remains attractive to rodents over long periods of time and does not cure over long periods of time (see [0011]; see instant claim 1).

20. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Baker and Maruyama and Endepols with a reasonable expectation for success in arriving at a rodenticidal composition in the form of a paste which comprises a fraction of carbohydrate and fatty matter both prevalently of vegetable origin. Baker teaches a bait composition which uses a carbohydrate and fat source solely from a vegetable origin. Although Baker does not include palm or coconut oil in their product, one of ordinary skill in the art would have readily done such. Maruyama is directed to rodenticidal composition which comprises a rodenticide, crop powder and a vegetable oil. Exemplified vegetable oils include palm, coconut and peanuts oils. One of ordinary skill would have recognized that vegetable oils in rodent bait are functionally equivalent and interchangeable and would endeavor to use any vegetable oil known at the time. Thus, if one were to modify the teaching of Baker such that it used coconut or palm oil rather than peanut oil, then this would have been a product of ordinary skill and common sense. It is not considered inventive to substitute out one known ingredient for another functionally identical ingredient. With respect to

the requirement that the bait be in the form of a paste, this would have been an obvious modification to composition of Baker. Paste, according to Endepols, is a preferred form because it can be shaped and molded and remains attractive to rodents after long periods of time. Therefore, the invention as a whole is *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in absence of evidence to the contrary.

21. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baker (US 5720951, published 02/24/1998; of record) in view of Maruyama et al. (JP H02-049501, published 11/30/1988, abstract relied upon; of record) and Endepols et al. (US 2005/0181003, filed 04/24/2003; of record) as applied to claims 1-13 above, and further in view of Aeschlimann (US 1858177, published 05/10/1932; of record).

22. Baker, Maruyama and Endepols fail to teach the composition comprising ground biscuit.

23. Aeschlimann is directed to a product for destroying animals such as rodents and rabbits. It's taught that useful bait is pastry. An exemplified pastry is powdered biscuit and is suggested as a useful means for attracting rodents (see column 2, lines 70-75; see instant claim 26).

24. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Baker, Maruyama, Endepols and Aeschlimann with a reasonable expectation for success in arriving at a bait composition which comprises ground biscuit. One would have been motivated to include powdered biscuit into the combination of above references as it would add an additional feature for attracting rodents to the bait. Moreover, if a component such a ground biscuit is added to a composition to improve

the compositions attractiveness to rodents, a person of ordinary skill in the art would recognize that its addition would improve other rodent bait compositions in the same way. Therefore, the invention as a whole is *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in absence of evidence to the contrary.

25. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baker (US 5720951, published 02/24/1998; of record) in view of Maruyama et al. (JP H02-049501, published 11/30/1988, abstract relied upon; of record) and Endepols et al. (US 2005/0181003, filed 04/24/2003; of record) as applied to claims 1-13 above, and further in view of Kondo et al. (US 5002768; published 03/26/1991).

26. Baker, Maruyama and Endepols fail to teach the method as applying between 10-30g of the composition per square meter.

27. Kondo cures this deficiency. Kondo is directed to rodent repellent preparations. Warfarin is contemplated for use. In the examples of using their compositions, it's taught that the rodent repellent material may be applied to a surface such that the composition is present in an amount of about 13 grams per square meter. Such amounts are useful for effectively controlling rodent populations.

28. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Baker, Maruyama, Endepols and Kondo with a reasonable expectation for success in arriving at a method of controlling rodent populations by applying between 10-30 grams per square meter of a rodenticidal paste composition. One would

have been motivated to combine the aforementioned teachings because in doing so would result in a method of applying an effective amount of composition to an area with the result of inhibiting rodent infestation. Therefore, the invention as a whole is *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in absence of evidence to the contrary.

Conclusion

29. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

30. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

31. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kyle A. Purdy whose telephone number is 571-270-3504. The examiner can normally be reached from 9AM to 5PM.

32. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau, can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

33. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Kyle Purdy/
Examiner, Art Unit 1611
July 22, 2009*

*/David J Blanchard/
Primary Examiner, Art Unit 1643*